THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 15368 OF 2007

Dated 19th July 2007

Between:

Md.Saleem Ur Rahman

…Petitioner

and

The A.P.State Wakf Board, Haj House Building,
Nampally, Hyderabad & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 15368 OF 2007

O R D E R:

The petitioner was appointed as a Mutawalli of a wakf, known as Fathekhanpet Kalan Mosque, Fathekhanpet, Nellore District. Disputes arose between the petitioner, on the one hand, and the Managing Committee, appointed by the Wakf Board for the said wakf, on the other hand. Two writ petitions, being W.P.Nos.3239 and 4571 of 2007, came to be filed before this court. Through a common order dated 25.4.2007, this court upheld the appointment of the petitioner as Mutawalli, and had set aside the appointment of a committee for the wakf. It is stated that no writ appeal has been filed against the said judgment, so far, much less any interim order was passed in it. The grievance of the petitioner is that in spite of the orders of this court in W.P.No.3239 of 2007, the respondents, and in particular, the members of the previous Managing Committee, i.e. respondents 7 to 16, are not permitting him to assume charge of the management of the wakf, nor

respondents 1 to 5 are extending their cooperation in the matter. In this background, the petitioner seeks appropriate directions to the respondents, to enable him to assume charge and to manage the affairs of the wakf.

Heard Sri K.Subrahmanya Reddy, learned Senior Counsel for the petitioner, Sri Mohd.Vasi Ahmed, learned counsel for Respondents 1 to 5, and learned Standing Counsel for A.P.Wakf Board.

This court rendered a common judgment in the writ petitions referred to above, upholding the appointment of the petitioner as Mutawalli, and setting aside the appointment of the Managing Committee, the 6th respondent herein. The result thereof, is that the petitioner is entitled to assume charge of the wakf and to manage it. Petitioner states that in spite of his best efforts, the respondents are not permitting him to assume charge and, in fact, physical resistance is being offered, whenever the petitioner made an effort to assume charge.

Had there been no provision under the Wakf Act, this Court would certainly have examined the feasibility of granting relief to the petitioner, in this writ petition itself. Section 68 of the Wakf Act contains a detailed procedure, for assumption of charge by a successor Mutawalli, or Committee. It places the removed Mutawalli or committee under obligation, to hand over the charge to the successor. In the event of failure, the successor Mutawalli is conferred with the right to approach the Judicial Magistrate of First Class, within whose jurisdiction the Wakf is situated, with an application. The Magistrate, in turn, is conferred with the power, to pass an order, after issuing notice to the affected parties.

Non-compliance with the order, that may be passed by the Magistrate, would entail in punishment, as well as the police assistance to the concerned party, to assume charge. When such detailed procedure is provided for under the Wakf Act, this court does not find any basis to entertain the writ petition.

Hence, the writ petition is disposed of, leaving it open to the petitioner, to avail the remedy under Section 68 of the Wakf Act. As and when the petitioner files an application, the concerned Magistrate shall take the steps, stipulated under Section 68 of the Act, as expeditiously as possible, and without any delay. There shall be no order as to costs.

_____

19th July 2007

PAN